



Billing Code: 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2016-0005]

United States Navy Restricted Area, Menominee River, Marinette Marine Corporation Shipyard, Marinette, Wisconsin.

AGENCY: U. S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers published a document in the Federal Register on May 24, 2011, amending its regulations to establish a restricted area in the Menominee River at the Marinette Marine Corporation Shipyard in Marinette, Wisconsin. The Corps published correcting amendments in the Federal Register on April 4, 2012, which corrected latitude and longitude coordinates and also revised administrative and enforcement responsibilities. The Corps is further amending these regulations to expand the existing restricted area to provide additional area of protection during the construction and launching of Littoral Combat Ships. The expansion would result in temporary encroachment within the Menominee River Federal Navigation Channel. The regulations are necessary to provide adequate protection of U.S. Navy (USN) combat vessels, their materials, equipment to be installed therein, and crew, while located at the Marinette Marine Corporation Shipyard.

DATES: Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or by e-mail at david.b.olson@usace.army.mil or Mr. Ryan J. Huber, U.S. Army Corps of Engineers, St. Paul District, Regulatory Branch, at 651-290-5859 or by email at ryan.j.huber@usace.army.mil.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities under Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending restricted area regulations at 33 CFR part 334 by revising § 334.815 to expand the previously established restricted area in the Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin. The amendment would also add a provision of disestablishment whereby the restricted area would be disestablished by no later than November 17, 2025. By correspondence dated October 29, 2015, the Department of the Navy, requested that the Corps of Engineers amend the regulations concerning this restricted area.

On August 11, 2016, the Corps' St. Paul District issued a local public notice soliciting comments on the proposed rule from all known interested parties and no comments were received. The proposed rule was published in the August 10, 2016 edition of the Federal Register (81 FR 52781) with the docket number COE-2016-0005 and one comment was received. One commenter requested that the first set of coordinates be recalculated to ensure correct position along the shoreline and asked that

the final rule include an explicit statement in regards to the horizontal datum used. The Corps responded to the comment by recalculating and updating the first set of coordinates as well as adding a statement in the final rule in regards to the horizontal datum used.

Procedural Requirements

a. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This proposed rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The Corps has made a determination this proposed rule is not a significant regulatory action. This regulatory action determination is based on the size and location of the restricted area. The restricted area does not occupy the entire Federal navigation channel near the shipyard and vessels utilizing that channel can transit around the restricted area. An operator of a vessel may also transit the restricted area as long as he or she obtains permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME or his/her authorized representative.

b. Impact on Small Entities.

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Corps certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels that intend to transit the restricted area may be small entities, for the reasons stated in paragraph (a) above this rule would not have a significant economic impact on any vessel owner or operator. In addition, the restricted area is necessary to address a major anti-terrorism and safety concern due to the lack of perimeter fencing or physical denial system. Small entities can utilize navigable waters outside of the restricted area. Small entities may also transit the restricted area as long as they obtain permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME or his/her authorized representative. The restricted area is necessary to provide adequate protection of U.S. Navy combat vessels, their materials, equipment to be installed therein, and crew, while located at the Marinette Marine Corporation Shipyard. The restricted area does not occupy the entire Federal navigation channel near the shipyard and vessels utilizing that channel can transit around the restricted area, or obtain permission to transit the restricted area. After considering the economic impacts of this restricted area regulation on small entities, I certify that this action will not have a significant impact on a substantial number of small entities.

c. Review Under the National Environmental Policy Act. An environmental assessment (EA) has been prepared. We have concluded that the establishment of the restricted area will not have a significant impact to the quality of the human environment

and, therefore, preparation of an environmental impact statement is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Reform Act. This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Public Laws 104-4, 109 Stat. 48, 2 U.S.C. 1501 et seq.). We have also found, under Section 203 of the Act, that small governments will not be significantly or uniquely affected by this rule.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the Corps is amending 33 CFR Part 334 to read as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.815 to read as follows:

§ 334.815 Menominee River, at the Marinette Marine Corporation Shipyard, Marinette, Wisconsin; naval restricted area.

(a) The area. The waters adjacent to Marinette Marine Corporation's pier defined by a rectangular shape on the south side of the river beginning on shore at the eastern property line of Marinette Marine Corporation at latitude 45°05'58.70" N., longitude 87°36'55.90"W.; thence northerly to latitude 45°05'59.72" N., longitude 87°36'55.61"

W.; thence westerly to latitude 45°06'03.22" N., longitude 87°37'09.75" W.; thence westerly to latitude 45°06'03.78" N., longitude 87°37'16.40" W.; thence southerly to latitude 45°06'2.80" N., longitude 87°37'16.56" W.; thence easterly along the Marinette Marine Corporation pier to the point of origin. The datum for these geographic coordinates is the World Geodetic System 1984 (WGS 84). The restricted area will be marked by a lighted and signed floating buoy line.

(b) The regulation. All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Naval authority, vessels of the United States Coast Guard, and local or state law enforcement vessels, are prohibited from entering the restricted area when marked by signed floating buoy line without permission from the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME or his/her authorized representative.

(c) Enforcement. The regulation in this section shall be enforced by the Supervisor of Shipbuilding, Conversion and Repair, USN, Bath, ME and/or such agencies or persons as he/she may designate.

(d) Disestablishment of restricted area. The restricted area will be disestablished

not later than November 17, 2025, unless written application for its continuance is made to and approved by the Secretary of the Army prior to that date.

DATE November 9, 2017

APPROVED_____

Thomas P. Smith,

Chief, Operations and Regulatory Division

Directorate of Civil Works

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